COMMUNITY DEVELOPMENT
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CITY OF MARYSVILLE
PLANNING DIVISION
STAFF REPORT & DECISION

File No:	PA 10013
Reference Tax Account No.:	Multiple
Date of Report:	August 2, 2011
Nature of Request:	Approval of a Conditional Shoreline Substantial Development Permit to allow the construction of a 4,000 LF levee; excavate and remove 1,800 LF of existing dike; create 1.1 acre fill pad (phase 2 and 3 of Christofferson grading project); and fill farm ditches
Applicant(s):	Tulalip Tribes of Washington Kurt Nelson 7515 Totem Beach Road Tulalip, WA 98271
Location:	North of Ebey Slough, south and west of Sunnyside Blvd, east of the WWTP
Current Zoning:	Open Space
Comprehensive Plan Land Use Designation:	Open Space
Shoreline Management Master Program Designation:	Urban Conservancy/High Intensity
DECISION:	APPROVE with conditions

I. EVALUATION

A. Project Description

The project goal is to restore tidal processes to 341.5 acres on a 360 acre site. This will be accomplished by breaching the existing dike at Ebey slough to reestablish tidal inundation and reconnect the site to Ebey Slough. The project is being constructed in phases. Earlier site preparation activities which were approved and/or constructed in previous phases include excavation of drainage channels; stockpiling activities; raising a portion of existing trail; Phase 1 Christofferson grading; cathodic protection of portions of sewer lines within the project boundary; and construction of a water quality treatment wetland to treat existing stormwater from Brashler Industrial Park. The current request is to receive a Conditional Shoreline Substantial Development Permit to allow the final phase of construction for the restoration project as follows:

1) Construct 4,000 lineal feet of new levee along the western perimeter of the site to protect adjacent properties, which includes the filling of approximately 16.5 acres of degraded palustrine emergent wetlands;
2) Excavate and remove 1,800 lineal feet of dike at Ebey Slough (breach area would be approximately 200 feet long and 21 feet deep);
3) Create a 1.1 acre fill pad (Phase 2 and 3 of Christofferson grading project) adjacent to Allen Creek; and
4) Fill farm ditches to eliminate the artificial linear drainage system.

According to the SEPA checklist, approximately 98,000 cubic yards of cut and 139,000 cubic yards of fill would be required to construct the project.

B. Site Description

The property is undeveloped agricultural land which has remained fallow for a number of years and has reverted back to a Category III, freshwater wetland. The topography is predominately flat and is surrounded by levees and short steep slopes. According to the *Soil Survey of Snohomish County,* soils are predominately classified as Puget silty clay loam, with some inclusions of Snohomish silt loam and Mukilteo muck. All three soil types are considered hydric. These soil types are characterized by low permeability with a high available water capacity, and are primarily found in depressional areas on floodplains. The eastern edge of the site has several distinct soil types including Mukilteo muck and Snohomish, Pastik, and Tokul silt loam.

C. Project History

Since the Tulalip Tribes purchased the former Poortinga Farm in 1998, the City has been involved in the Qwuloolt Estuary Restoration Project. The City has participated in numerous Trustee/Partner meetings over the years in which multiple dike breach and trail options were evaluated and discussed. In 2006, an Alternatives Assessment was prepared which evaluated 4 dike breach and public access scenarios; an Open House was held in April of 2006 to take public comment on the proposed alternatives. Since 2006, project partners worked to refine the

preferred alternative to enhance ecological and biological objectives and reduce the overall impacts and costs. Public discussions have been held with both the City's Planning Commission and City Council regarding the proposed alternatives and trail alignment.

Since 2007, the City has approved three (3) shoreline substantial development permits to allow phased construction of various site preparation activities including the construction of historic stream channels in lower Allen and Jones Creeks; filling of existing agricultural ditches; stockpiling activities; raising a portion of existing trail; Phase 1 Christofferson grading; cathodic protection of portions of sewer lines within the project boundary; and construction of a water quality treatment wetland to treat existing stormwater from Brashler Industrial Park. In 2010, the City received the application for the final phase of the project. A neighborhood meeting was held in September of 2010 at Sunnyside Elementary School; approximately 75 neighbors attended the meeting. Issues raised at the meeting included concerns with odor, flooding, salt water intrusion, and increased rodent populations.

D. Consistency with Shoreline Master Program:

The subject property is located within the 100-year FEMA designated floodplain and the majority of the site (east of Allen Creek) is located in the FEMA designated floodway. The applicable shoreline designation for the majority of the property is Urban Conservancy, with a small portion within the High Intensity designation along 47th Ave NE.

The goals of this restoration effort are to restore more natural drainage features to the site in preparation for tidal inundation. The project is the Final Phase of the QWULOOLT Estuarine Restoration Plan which is identified as the number 1 priority in Chapter 9 of the SMP Restoration Plan.

Shoreline: Development goals and policies contained in the City of Marysville Shoreline Master Program which are directly applicable to this proposal follow (comments are *italicized*):

Chapter 2, Section B (1) Shoreline Use Element

Goal 6(e), Increase public access to publicly owned areas of the shorelines.

> ***Applicant's Response:*** *The purpose of the project is the restoration of natural character and ecological functions of the shoreline and the project is a priority project of the City's Shoreline Restoration Plan. As such, the project aims to balance access with ecological objectives. The project will maintain the existing public use of the shoreline and allow the development of additional public access in the future. The existing trail along the eastern boundary of the site would not be displaced by the project. One section of trail near the residential community on the northeast boundary of the project site would be raised as part of the project to prevent inundation. The proposed project would not include development of new public access or recreation facilities. However, the development of new public access to shorelines would not be precluded by the project. A perimeter trail could provide access to Ebey Slough on the east and west side of the restoration area. The perimeter trail could be approximately 2.9 miles in length. Viewpoints could be constructed at both of the access points. It would not be possible to*

provide trail access along Ebey Slough, but opportunities for linking perimeter trails to the proposed Ebey Waterfront Trail and Downtown Trail would be preserved.

Staff Response: The City is not requiring the applicant to construct the proposed trail, however prior to the levee breach, construction/access/maintenance easements will need to be granted to the City over the newly constructed levee and adjacent to Sunnyside Blvd on TP# 30053400102100. An additional trail easement also needs to be obtained to connect the southern end of the Harborview Village Trail to the planned park located on TP#(s)29050300108500 & 290503108400.The easements will need to be recorded with the Snohomish County Auditor's Office prior to dike breach.

Chapter 2, Section B (2) Economic Development

Goal 4. Develop as an economic asset, the recreation industry along shorelines in a manner that will enhance the public enjoyment of, and public access to shorelines. Encourage improvements of boat launches, marina facilities, and public access trails when coupled with environmental protection and/or restoration.

Applicant's Response: *While future recreational development (e.g.; development of new public access) would not be precluded by the project, economic development is not a goal of the project. The project is identified as a priority project in the City's Shoreline Ecological Restoration Plan because it will provide the City with the most ecological benefit.*

Staff Response: See staff response above to Chapter 2, Section B(1) Shoreline Use Element.

Chapter 2, Section B(4) Conservation Element

The Conservation Element of the Marysville Shoreline Management Program includes several goals that specifically support the Qwuloolt Estuary Restoration Project, including:

Goal 1. As a long term goal, seek no further degradations of environmental functions and where appropriate, the restoration of Ebey Slough and associated wetlands to perform their natural ecological functions within the Snohomish River Estuary.

Applicant's Response: *The Qwuloolt Estuary Restoration Project would restore tidal functions and tidal wetlands to the project area. Breaching the existing levees and restoring daily tidal flows to the project area would allow it to perform its natural ecological functions within the Snohomish Estuary. The channels of Jones and Allen Creeks would be restored to more natural conditions, which will improve fish passage and access to freshwater habitats. The Qwuloolt Estuary Restoration Project would expand the City's existing estuary restoration project on the southeast side of the Qwuloolt property.*

Goal 3. Reclaim and restore areas that are biologically and aesthetically degraded to the greatest extent feasible while maintaining appropriate use of the shoreline. Consider the restoration of

the Qwuloolt site and add trails with interpretive displays describing the natural ecology and restoration process.

> ***Applicant's Response:*** *The project will restore the biological functions of the former estuary area and Jones and Allen Creeks. The project area will be restored to a tidal estuary which will be more compatible aesthetically with the Snohomish River Estuary. Invasive vegetation on the site will be eliminated by the brackish flows and the Tulalip Tribe will remove invasive species and plant native species around the perimeter of the site and on the installed berms. This project is the restoration project for the Qwuloolt site proposed in the SMP. The proposed project does not include trails, but is designed to allow the construction of trails around the perimeter of the site in the future. Interpretive displays could be installed along those trails in the future.*
>
> ***Staff Response: The applicant will be required to provide trail easements so as not to preclude development the planned Ebey Waterfront Trail along the restoration project.***

Goal 6. Pursue a comprehensive program of ecological enhancements as identified in the Shoreline Ecological Restoration Plan attached to the SMP.

> ***Applicant's Response:*** *The project is identified as a priority restoration project in the City's Shoreline Ecological Restoration Plan. The project is identified as a priority project because it will provide the City with the most ecological benefit. The City has been a participating agency in the development of the Qwuloolt Estuary Restoration Project.*

Chapter 2, Section B(5) Public Access Element

Goal 1. Provide, protect, and enhance a public access system that is both physical and visual, utilizing both private and public lands, which increases the amount and diversity of public access to the State's shorelines consistent with the natural shoreline character, private rights, and public safety.

> ***Applicant's Response:*** *The Qwuloolt site is the largest open space within the City of Marysville and it is currently used for passive recreation, including a trail along the eastern boundary of the site. The Qwuloolt Estuary Restoration Project will maintain the existing public use of the shoreline and allow the development of additional public access in the future. One section of the existing trail along the eastern boundary of the site would be raised as part of the project to prevent inundation.*
>
> ***Staff Response: The granting of trail easements to the City that will allow future development of public trails along the restoration project will increase the amount and diversity of public access to the State's shorelines.***

Goal 2. Construct a continuous public path along the Ebey Slough shoreline while providing protection of ecological functions.

> ***Applicant's Response:*** *A perimeter trail could provide access to Ebey Slough on the east and west side of the restoration area. The perimeter trail could be approximately 2.9*

miles in length. Opportunities for linking the perimeter trails to the proposed Ebey Waterfront Trail and Downtown Trail would be preserved.

Staff's Response: The trail easements need to be granted to ensure the opportunity to link the Ebey Waterfront Trail and Downtown trail.

Goal 3. Integrate public access to shorelines as a part of the City public trail system consistent with the adopted GMA Plan.

Applicant's Response: *See response to Goals 1 and 2 above.*

Staff's Response: Development of the Ebey Waterfront trail and Downtown trail are identified in the 2005 Comprehensive Plan, Shoreline Master Plan and Park and Recreation Plan.

Goal 4. Develop a comprehensive public access system that incorporates public access into the new shoreline development and unifies individual public access elements.

Applicant's Response: *See response to Goals 1 and 2 above.*

Staff's Response: See response to Goal 1, 2, and 3 above.

Chapter 3, Section (B)(3)(c) Urban Conservancy Environment Management Policies

- During development and redevelopment, all reasonable efforts should be taken to restore ecological functions. Where feasible, restoration and public access should be required of all non-water dependent development on previously developed shorelines.
- Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the urban conservancy designation to ensure that new development does not further degrade the shoreline and is consistent with an overall goal to improve ecological functions and habitat for priority species.
- Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.
- Water oriented uses should be given priority over non-water oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.
- Derelict, unsafe and unlawful structures should be removed or brought into conformance of this SMP.

Applicant's Response: *The restoration project is consistent with the main purpose of the Urban Conservancy Environment, which is to protect and restore ecological functions in urban and developed settings. The project would benefit wildlife by enhancing habitat in the area, creating approximately 340 acres of intertidal habitat that would benefit fish, amphibians, reptiles, shorebirds, waterfowl, and other birds. Non-water oriented uses are not provided by this project.*

Chapter 4, Section (B)(5)(b) Flood Hazard Reduction and River Corridor Management

Policy 2. In regulating development on shorelines within SMA jurisdiction, endeavor to achieve the following:

a. Maintenance of human safety.
b. Protection and, where appropriate, the restoration of the physical integrity of the ecological system processes, including water and sediment transport and natural channel movement.
c. Protection of water quality and natural groundwater movement.
d. Protection of fish, vegetation, and other life forms and their habitat vital to the aquatic food chain.
e. Protection of existing legal uses and legal development unless the City determines there is a compelling reason to the contrary based on public concern and the provisions of the SMA.
f. Protection of recreation resources and aesthetic values, such as point and channel bars, islands, and other shore features and scenery.

Applicant's Response: *The project would benefit wildlife and vegetation through habitat enhancement and would restore ecological systems and water quality. The project would have no impact on human safety or land use. The project would restore biologically degraded areas while preserving open space, existing public access, and recreational uses.*

Staff Response: Several studies have been performed by the agencies and consultants to identify and analyze flood impacts and analysis. Flooding impacts are a critical issue for project review and has been identified as a key concern by neighboring residential and industrial property owners, and the City of Marysville.

Phillip Williams and Associates, LTD ("PWA") conducted the hydrologic assessments of the project through various design assessment memorandums. These include the following:

1) ***Assessment of Flood Risk, dated 12/1/08 (Exhibit 20)***
2) ***Qwuloolt Tidal Wetland Preliminary Design, dated 12/2/08 (Exhibit 22)***
3) ***Outboard Levee Breach and Tidal Channel Sizing dated 12/1/08 (Exhibit 23)***
4) ***Industrial Park Stormwater Improvements (Exhibit 24)***
5) ***Allen Creek Flood Modeling (Exhibit 25)***
6) ***Preliminary Model Results: Restoration Impacts on Ebey Slough, dated 1/30/05 (Exhibit 26)***

A principle design objective of the restoration project is to "not worsen existing flood risk to adjacent properties and uses". The existing levee system is estimated adequate for a 10 year water levels. The surrounding development to the restoration project has been built above the 100-year water level. The various memorandums and analysis conducted by the project consultants and agencies examine the ensuing conditions created by the restoration project and identify design recommendations to mitigate flood and erosion impacts introduced by the changed tidal environment.

Based on the modeling/studies provided, the proposed Qwuloolt Restoration alternative design does not appear to result in significant adverse impacts to the surrounding area or result in significant alterations to existing condition velocities and channel scour. The analysis concludes that additional mitigation for these areas does not appear necessary, however monitoring of the site and Ebey Slough are proposed as part of the restoration project.

Policy 3. Undertake flood hazard planning, where practical, in a coordinated manner among affected property owners and public agencies and consider entire drainage systems or sizable stretches of rivers, lakes, or marine shorelines. This planning should consider the off-site erosion and accretion or flood damage that might occur as a result of stabilization or protection of structures or activities. Flood hazard management planning should fully employ nonstructural approaches to minimize flood hazard to the extent possible.

Applicant's Response: *The project lies within the 100-year floodplain but would maintain the same level of flood protection as currently exists. Modeling has shown that the project would not increase flood levels or flood risk upstream of the 3rd Street Crossing, and 4,000 feet of new levee will be constructed to protect adjacent properties. The installed levee and surrounding slope protection would extend to or above the existing level of protection. In a memorandum submitted to the City, the Corps of Engineers has shown that the setback levee will result in a minimal (0.1 foot) rise in the base flood elevation. However, it appears that the increase is attributable to model assumptions (e.g., the existing model does not include the City's wastewater treatment plant levees), rather than the volume of floodplain fill proposed for the project. The project would not cause long-term increases in erosion. A temporary erosion control plan would be prepared to manage any impacts during construction using best management practices.*

Policy 4. Give preference to and use nonstructural solutions over structural flood control devices wherever feasible, including prohibiting or limiting development in historically flood-prone areas, regulating structural design and limiting increases in peak storm water runoff from new upland development, public education, and land acquisition for additional flood storage. Structural solutions to reduce shoreline hazard should be allowed only after it is demonstrated that nonstructural solutions would not be able to reduce the hazard.

Applicant's Response: *The project is not a flood control measure and would not increase development in flood-prone areas or increase peak flows. The project would provide the same level of flood protection to adjacent properties as existing conditions. The project includes a water quality retrofit for impacted stormwater drains on the east side of the property.*

Policy 5. In designing publicly financed or subsidized works, give consideration to providing public pedestrian access to the shoreline for low-impact outdoor recreation.

Applicant's Response: *The project would maintain existing levels of pedestrian access to the shoreline. The project would include raising a segment of existing public trail on*

the site to prevent inundation. The project would allow for additional pedestrian access to be developed in the future.

Staff Response: In order to ensure the development of future additional pedestrian access, the applicant will be required to grant trail construction/access/maintenance easements to the City prior to levee breach.

Policy 6. Encourage the removal or breaching of dikes to provide greater wetland area for flood water storage and habitat; provided, such an action does not increase the risk of flood damage to the existing human development.

Applicant's Response: *The project includes lowering and breaching the existing dike at Ebey Slough. This action would establish tidal inundation and reconnect the site to the Slough, increasing the area for water storage and habitat. Approximately 1,800 linear feet of dike would be excavated and removed. The project would maintain the same level of flood protection for adjacent properties as the existing levees.*

Staff Response: The US Department of the Army, Seattle District, Corps of Engineers performed a zero-rise analysis for the proposed setback levee along Ebey Slough. The zero-rise analysis was completed on 3/29/11 The analysis identified a .1 ft rise in the unencroached flood level within the restoration site and potential .2 ft rise at points south of the site.

The City of Marysville met with staff from FEMA, US Army Corps of Engineers, Tulalip Tribes and Department of Ecology to discuss the results. FEMA has issued a policy on fish enhancement structures within the floodway. In the meeting FEMA staff described the policy as it relates to restoration projects, such as the Qwuloolt Restoration. The policy identifies that rather than "no-rise", the community official should certify that the project was designed to keep the rise within the floodplain as close to zero as practically possible and that no structures are impacted by the rise. DOE staff also contacted Snohomish County staff to share this data and they did not indicate concern.

Chapter 4, Section (B)(7) Public Access

Policy 1. Public access should be considered in the review of all private and public developments (including land division) with the exception of the following:

a. One- and two-family dwelling units; or
b. Where deemed inappropriate due to health, safety and environmental concerns.

Public access should be required when land is divided into more than four residential lots.

Applicant's Response: *While the project is a restoration project, not a traditional 'development' project as this policy more closely addresses, the project would not displace existing public access on or adjacent to the site. Access to sections of the trail along the eastern boundary of the site would be temporarily prevented during construction, but would be reestablished when construction is complete. The intertidal*

area would not be accessible by foot during high tide and access would be limited during low tide because of mudflats.

Policy 2. Developments, uses, and activities on or near the shoreline should not impair or detract from the public's access to the water or the rights of navigation.

Applicant's Response: *The project will not interfere with the public's rights of navigation. Currently the only boating in the area occurs on Ebey Slough and that use will not be affected by the project. Restoration of the site will allow more people to observe the natural tidal functions of the Snohomish River Estuary. Access to the intertidal area would be limited during low and high tides as described above under Policy 1 due to the restored intertidal functions on the site.*

Policy 3. Public access should be provided as close as possible to the water's edge without causing significant ecological impacts and should be designed in accordance with the 'Americans with Disabilities Act'.

Applicant's Response: *The focus of the project is on ecological restoration and does not include public additional access. However, the existing public access along the east side of the property would be maintained and the project does not preclude additional public access in the future.*

Policy 4. Opportunities for public access should be identified on publicly owned shorelines. Public access afforded by shoreline street ends, public utilities and rights-of-way should be preserved, maintained and enhanced.

Applicant's Response: *The project preserves existing public access to the property and does not preclude the development of additional access in the future. In general, an increase in recreational use of the site could result from more frequent or longer visits by local residents, bird watchers and recreational kayakers as a result of the restoration actions.*

Policy 5. Public access should be designed to provide for public safety and comfort and to minimize potential impacts to private property and individual privacy. There should be a physical separation or other means of clearly delineating public and private space in order to avoid unnecessary user conflict.

Applicant's Response: *Since no new public access is being provided, this policy is not applicable to the project.*

Policy 6: Public views from the shoreline upland areas should be enhanced and preserved. Enhancement of views should not be construed to mean excessive removal of existing native vegetation that partially impairs views.

Applicant's Response: *No existing views would be obstructed by the project and existing public viewpoints will be preserved. The project does not preclude the addition of viewpoints in the future.*

Views on the site will change with the reintroduction of daily tidal influence and the area transitions from freshwater emergent vegetation to an emergent march with a scrub-shrub component over time. Much of the site will become mudflat within a year after the levee is breached. It will likely take several years for estuarine and scrub-shrub plant communities to colonize and establish the area.

Policy 7: Public access and interpretive displays should be provided as part of publicly funded restoration projects where significant ecological impacts can be avoided.

Applicant's Response: *The proposed project does not include trails, but is designed to allow the construction of trails around the perimeter of the site in the future. Interpretive displays could be installed along those trails in the future.*

Policy 8: The Ebey Waterfront Trail and, where applicable, the City's Parks and Recreation Plan should be implemented to provide a continuous waterfront multi-purpose trail from the City's Waterfront Parks to the east and north to connect to the Sunnyside Drive Public Access Point and to proposed regional trails.

Applicant's Response: *The project does not include providing a trail, but it does not preclude development of perimeter trails that would connect to other trails.*

Policy 9: N/A

Policy 10: The acquisition of suitable upland shoreline properties to provide access to publicly owned shorelands should be encouraged.

Applicant's Response: *The Trustees purchased the Poortinga property where the restoration project is located. The Trustees have cooperated with the City of Marysville and other partners to acquire surrounding lowland and upland properties. The upland properties will provide flood protection to adjacent City and private property and the properties can be used by the City in the future to provide access to the shoreline around the Qwuloolt Estuary Restoration Project.*

Regulation 1. Except as provided in regulations 2 and 3, shoreline substantial developments or conditional uses shall provide public access where any of the following conditions are present:

a. Where development or use will create increased demand for public access to the shoreline, the development or use shall provide public access to mitigate this impact.
b. Where a development or use will interfere with an existing public access way, the development or use shall provide public access to mitigate this impact. Impacts to public access may include blocking access or discouraging use of existing on-site or nearby accesses.
c. Where a use which is not a priority shoreline use under the Shoreline Management Act locates on a shoreline of the stat, the use or development shall provide public access to mitigate this impact.

d. Where a use or development will interfere with a public use of lands or waters subject to the public trust doctrine, the development shall provide public access to mitigate this impact.
e. Where the development is is proposed by a public entity or on public lands.
f. Where called for under the City's public access plan, including the Ebey Waterfront Trail.
g. Where the rights of navigation are impacted, the proposed development will include mitigation for that impact.
h. As part of development for non-water dependent uses (including water-enjoyment and water-related uses) and subdivisions of land into more than four parcels.

The shoreline permit file shall describe the impact, the required public access conditions, and how the conditions address the impact. Mitigation for public access shall be in accordance with the definition of mitigation and mitigation sequence in Section 4.B.4.

Applicant's Response: *The project is a priority project in the City's Shoreline Restoration Plan. As such, the project aims to balance access with ecological objectives. The project will maintain the existing public use of the shoreline and allow the development of additional public access in the future. The project will not interfere with an existing public access way.*

Regulation 2. An applicant need not provide public access where the City determines that one or more of the following conditions apply:

a. The adopted City's public access planning indicates that public access is not required;
b. Unavoidable health or safety hazards to the public exist which cannot be prevented by any practical means;
c. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
d. The cost of providing the access as determined by the City, easement or an alternative amenity is unreasonably disproportionate to the total long-term cost of the proposed development;
e. Significant ecological impacts will result from the public access which cannot be mitigated; or
f. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.

Applicant's Response: *Restoration of tidal processes at the site complicates the ability to provide public access to the water's edge and is not proposed as part of this project. Providing access facilities in the future is not precluded by this project.*

Staff Response: The above listed conditions do not apply. The applicant will be required to provide trail easements to allow the City to construct and operate the planned trail system along the restoration project.

Regulation 3. In order to meet any of the following conditions "a" through "f" above, the applicant must first demonstrate and the City determine in its findings that all reasonable alternatives have been exhausted, including but not limited to:

a. Regulating access by such means as maintaining a gate and/or limiting hours of use;
b. Designing separation of uses and activities (e.g. fences, terracing, use of one-way glazings, hedges, landscaping, etc.); and
c. Developing provisions for access at a site geographically separated from the proposal such as a street end, vista or trail system.

Applicant's Response: *This regulation is not applicable to the project.*

Regulation 4. Public access provided by the shoreline street ends, public utilities and right-of-way shall not be diminished.

Applicant's Response: *The project will not displace or diminish public access provided by any street ends, public utilities, and rights-of-way.*

Regulation 5. Public access sites shall be connected directly to the nearest public street or public right-of-way and shall include provisions for physically impaired persons, where feasible.

Applicant's Response: *The project will maintain the existing connection between the trail on the east side of the property and the public streets.*

Staff Response: Planned trail segments connect to public right-of-way and will be ADA accessible where feasible.

Regulation 6. Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity.

Applicant's Response: *Access to all sections of the trail along the eastern boundary of the site would be completely restored following construction.*

Staff Response: The City is not requiring the applicant to construct the planned trail segments, however, construction/access/maintenance easements need to be granted to the City prior to completion of the restoration project to not prevent/delay trail construction by the City.

Regulation 7. Public access easements and permit conditions shall be recorded on the deed of title and/or on the face of a plat or short plat as a condition running contemporaneous with the authorized land use, at a minimum. Said recording with the County Auditor's Office shall occur at the time of permit approval (RCW 57.17.110).

Applicant's Response: *This regulation is not applicable to the project.*

Staff Response: Required trail easements will be required to be recorded with the Snohomish County Auditor's Office prior to levee removal.

Regulation 8. Minimum width of public access easements shall be 20 feet, unless the City determines that undue hardship would result. In such cases, easement width may be reduced only to the minimum extent necessary to relieve the hardship.

Applicant's Response: *This regulation is not applicable to the project.*

Staff Response: Easement widths will be a minimum of 20 feet in width unless otherwise determined by the City.

Regulation 9. The standard state approved logo or other approved signs that indicate the public's right of access and hours of access shall be constructed, installed and maintained by the applicant in conspicuous locations at public access sites. In accordance with regulation 3-a, signs may control or restrict public access as a condition of approval.

Applicant's Response: *This regulation is not applicable to the project.*

Regulation 10. Future actions by the applicant successors in interest or other parties shall not diminish the usefulness or value of the public access provided.

Applicant's Response: *The project will not diminish the usefulness or value of the existing public access.*

Staff Response: ***The Ebey Waterfront Trail is identified as a segment of the planned regional trail in the City's Shoreline Master Plan, Comprehensive Plan, Downtown Master Plan, and Parks Plan. The original trail design identified a portion of the regional trail being constructed along the existing Ebey Slough Dike, which would connect the Downtown Waterfront trail segment easterly to the Sunnyside Area. Over a period of several years the City participated with the Tulalip Tribes and project Trustees to reach a preferred dike breach alternative that would allow both the City's planned trail system and the restoration project to move forward. As a result of the dike breach design that was chosen, the City will construct a portion of the trail on two segments of existing city-owned dike located east and west of the proposed breach. The newly constructed dike is proposed to tie into the existing City dike in the southwest corner of the project site thereby connecting approximately 4,000 lineal feet of new public trail with waterfront (restoration site) frontage. The increase in public trail access will help mitigate for the loss of the direct east/west Ebey waterfront connection that occurred as a result of the breach size/location. Through conversations with both the Tulalip Tribes and Trustees, the City will be responsible for the construction and maintenance of the trail system constructed on the new levee, however, the Tulalip Tribe will be required to provide construction, maintenance, and public access easements on the new levee to allow trail construction/operation.***

Additionally, in accordance with the Ebey Waterfront Trail plan and Shoreline Master Plan, a construction/maintenance/public access/recreation easement will need to be granted to the City for the future trail segment which connects the northern end of the Harborview Village trail to Sunnyside Boulevard. The easement would need to be granted over TP# 30053400102100 adjacent to Sunnyside Boulevard. Again the City

will be responsible for trail construction and maintenance of the trail segment. An additional trail easement also needs to be obtained to connect the southern end of the Harborview Village Trail to the planned park located on TP#(s)29050300108500 & 290503108400.

All required easements shall be recorded with the Snohomish County Auditor prior to levee removal.

Chapter 4, Section (B)(8) State-Wide Significance Regulations

Policy 1. Recognize and protect the state-wide interest over local interest.

a. Solicit comments and opinions from groups and individuals representing state-wide interest by circulating the master program, and any amendments there of affecting shorelines of state-wide significance, to state agencies, adjacent jurisdictions, citizen's advisory committees and local officials and state-wide interest groups.
b. Recognize and take into account state agencies policies, programs and recommendations in developing and administering use regulations and in approving shoreline permits.
c. Solicit comments, opinions and advice from individuals with expertise in ecology and other scientific fields pertinent to shoreline management.

Applicant's Response: *Recognizing that Ebey Slough is a shoreline of state-wide significance and is of value to the entire state, the overall intent of the project includes restoration of ecosystem function, structure, and dynamic processes for the long-term ecological benefits, including for the benefit of future generations.*

Natural Resources Trustees assigned to the Tulalip Landfill site (Tulalip Tribes of Washington; the U.S. Department of the Interior – U.S. Fish and Wildlife Service; the U.S. Department of Commerce – National Oceanic and Atmospheric Administration (NOAA); and the State of Washington – Department of Ecology, selected restoration of the Quwloolt Estuary as the preferred strategy for restoration of trust resources because it provides a combination of actions to maximize the opportunity for restoration and will result in an increase in the greatest diversity of estuarine habitats. The Trustees have conducted extensive studies of the hydrologic and biologic characteristics of the project site and used these studies, and applicable regional studies to guide the design of the project. See the SEPA checklist for a listing of studies and evaluations.

The Trustees in coordination with the City of Marysville have conducted workshops and public meetings to solicit public input on the restoration project.

Policy 2: Preserve the natural character of the shoreline.

a. Designate and administer shoreline environments and use regulations and restore the ecology and environment of the shoreline as a result of man-made intrusions on shorelines.

b. Upgrade and redevelop those areas where intensive development already exists in order to reduce adverse impact on the environment and to accommodate future growth rather than allowing high intensity uses to extend into low-intensity use or underdeveloped areas.
c. Protect and restore existing diversity of vegetation and habitat values, wetlands and riparian corridors associated with shoreline areas.
d. Protect and restore habitats for State-listed 'priority species.'

Applicant's Response: *The purpose of the project is to restore the natural resources of the Qwuloolt Estuary to historic conditions. These resources were lost when the estuary was diked and cut off from the natural influences of the Snohomish River and tides. The Qwuloolt Restoration Project will restore the historic and natural influences of the river and tides and restore a function wetland complex connected to the broader Snohomish estuary system consistent with the stated policy. The project will provide improved fish passage for listed fish species – Puget Sound Evolutionarily Significant Unite (ESU) Chinook salmon, Coastal-Puget Sound Distinct Population Segment (DPS) bull trout, and Puget Sound DPS steelhead.*

Policy 3. Result in long-term over short-term benefit.

a. Evaluate the short-term economic gain or convenience of developments relative to the long-term and potentially costly impairments to the natural shoreline.
b. In general, preserve resources and values of shorelines of state-wide significance for future generations and restrict or prohibit developments that would irretrievably damage shoreline resources.

Applicant's Response: *By its nature, the project will provide long-term ecological benefits consistent with the stated policy.*

Policy 4: Protect the resources and ecology of the shoreline.

a. All shoreline development should be located, designed, constructed and managed to avoid disturbance of and minimize adverse impacts to wildlife resources, including spawning, nesting, rearing and habitat areas and migratory routes.
b. Actively promote aesthetic considerations when contemplating new development, redevelopment of existing facilities or general enhancement of shoreline areas.

Applicant's Response: *The project site has been evaluated and planned for ecological restoration over the past ten years. The site was historically estuary wetland, converted to farmland in the early 1900's. Over the last 15 years the land has not been farmed and has lain fallow. Overall the project will restore natural functions to the site and will benefit wildlife resources. Improvements to the Jones and Allen Creek channels will improve fish passage for listed Chinook salmon, bull trout, and steelhead. Species present at the site would experience temporary disruptions during construction, but most animals are anticipated to return to the area following construction. See the SEPA checklist for additional information.*

Aesthetically, the site will appear different after the reintroduction of daily tidal influence. The current freshwater emergent vegetation will become either mudflat or estuarine emergent marsh directly after the breech is completed, but is expected to evolve into an emergent marsh with a scrub-shrub component over time. Much of the site will become mudflat within a year after the levee is breeched. It will likely take several years for estuarine and scrub-shrub plant communities to colonize and establish the area.

Policy 5: Increase public access to publicly owned areas of the shoreline.

a. Give priority to developing paths and trails to shoreline areas, linear access along the shorelines and to developed upland parking.
b. Locate development landward of the ordinary high water mark so that access is enhanced.
c. Prevent development that would impede navigation on waters of the state.

Applicant's Response: *See response to policies under Chapter 4, Section (B)(7) Public Access, above.*

Staff Response: By granting trail easements to the City to allow their development and operation, the applicant will have met the State's policy under the SMA of giving priority to development paths and trails to shoreline areas.

Policy 6: Increase recreational opportunities for the public on the shoreline.

a. Plan for and encourage development of facilities for recreational use of the shoreline.
b. Reserve areas for lodging and related facilities on uplands well away from the shorelines with provisions for non-motorized access to the shoreline.

Applicant's Response. *Though the project would not include development of new recreation facilities, existing recreational uses would be preserved. The project would not preclude the development of new trails providing public access to the shorelines. An increase in recreational use of the site could result from the project.*

Staff's Response: See Staff Response to Chapter 4, Section (B)(7) Public Access.

Chapter 5, Section 7(b) - Policies:

Policy 2: All shoreline restoration and/or enhancement projects should protect the integrity of adjacent natural resources including aquatic habitats and water quality.

Applicant's Response: *The channels of Jones and Allen Creek are being restored to more natural configurations, thereby improving fish passage. The high berms internal to the property and perimeter of the site (between 9 and 13 feet NAVD 88) will be planted with native vegetation and invasive species will be controlled in these areas.*

Policy 3: Where possible, shoreline restoration and/or enhancement should use maintenance-free or low-maintenance designs.

Applicant's Response: *The Qwuloolt Estuary Restoration Project has been designed to be maintenance-free or low-maintenance. Once the levees are breeched, natural processes will be allowed to restore tidal functions to the area and no active maintenance is planned for the tidal area. Vegetation will be allowed to establish naturally in the new tidal area. The high berms internal to the property and the perimeter of the site (between elevations 9 and 13 feet NAVD 88) will be planted with native vegetation and invasive species will be controlled in those areas. The Tulalip Tribe will develop a monitoring and maintenance plan for those revegetated areas.*

Policy 4: The City will pursue the recommendations in the shoreline restoration plan prepared as part of this SMP update. The City will give priority to projects consistent with this plan.

Applicant's Response: *The Qwuloolt Estuary Restoration Project is specifically identified as a priority project in the shoreline restoration plan.*

Regulation 1. Shoreline enhancement may be permitted if the project proponent demonstrates that no significant change to sediment transport or river current will result which will adversely affect ecological processes, properties, or habitat.

Applicant's Response: *The proposed project will result in changes to todal flow on the site and within Ebey Slough. These changes will restore the historical condition that occurred prior to installation of the artificial levees along Ebey Slough. Changes in tidal flow and associated sediment transport are anticipated to have a beneficial effect on a suite of ecological functions as the site rebuilds a marsh plain and provides tidal channels that provide a variety of water depths over a tide cycle. The project will restore the ecological processes, properties and aquatic habitat of the area. This is further documented in the attached SEPA checklist.*

Regulation 2. Shoreline restoration and/or enhancement projects shall use 'best available science' and best management practices.

Applicant's Response. *The Qwuloolt Estuary Restoration Project has been designed using both best available science and best management practices. The Trustees and the project consultants have conducted extensive studies of the hydrologic and biologic characteristics of the project site and used these studies, and applicable regional studies to guide the design of the project.*

Regulation 3. Shoreline restoration and/or enhancement shall not significantly interfere with the normal public use of the navigable waters of the state without appropriate mitigation.

Applicant's Response: *The proposed project will not interfere with normal public use of navigable waters. Currently the only boating in the area occurs on Ebey Slough and that use will not be affected by the project. Restoration of the site will allow more people to observe the natural tidal functions of the Snohomish Estuary.*

Regulation 4. Shoreline restoration and ecological enhancement projects may be permitted in all shoreline environments provided:

a. The project's purpose is the restoration of natural character and ecological functions of the shoreline, and
b. It is consistent with the implementation of a comprehensive restoration plan approved by the City, or the City finds that the project provides an ecological benefit and is consistent with the master program.

Applicant's Response: *The purpose of the project is the restoration of natural character and ecological functions of the shoreline and the project is a priority project in the City's Shoreline Restoration Plan.*

E. Conditional Use Criteria

Pursuant to Chapter 5.B.4 of the *Shoreline Master Plan,* a conditional use permit is required for the construction of the proposed levee and placement of fill within the FEMA designated floodway and 100-year floodplain. The following conditional use permit criteria are set forth in the *Shoreline Master Plan*:

1. The proposed use will be consistent with the policies of the SMA and the policies of the master program.

   Applicant's Response: *The levee and associated fill is needed to protect adjacent properties and is an essential part of the project's feasibility. Information on how the project is consistent with the goals and policies of the SMP as described above relate to the project in its entirety (restoration elements and levee construction) as restoration cannot occur without protecting adjacent properties. While levee construction would result in wetland impacts on a portion of the site, restoration would improve ecological conditions on the site and cause a net gain in wetland functions and values. Therefore, the project is considered self-mitigating.*

2. The proposed use will not interfere with the normal public use of public shorelines.

   Applicant's Response: *The new setback levee will not include public access, but it will be designed so as to not preclude the development of public access in the future. The setback levee will not interfere with any existing public use of the shoreline.*

   Staff Response: The granting of trail construction/access/maintenance easements to allow the construction of the planned trail will after trail development allow public use/enjoyment of the newly restored shoreline.

3. The proposed use of this site and design of the project will be compatible with other permitted uses in the area.

   Applicant's Response: *The levee and associated fill will be consistent with adjacent land using and zoning. The site is currently zoned Open Space and would remain open space. The open space use is compatible with the adjacent industrial park and residential areas around the perimeter of the property. No existing views would be obstructed by the levee; however, the overall site will appear different after the reintroduction of daily tidal influence.*

The levee will be located, designed, constructed, and maintained so its resultant effect on hydraulic shoreline processes will not cause damage to other permitted uses in the area, and so that the physical integrity of adjacent upland areas is maintained. Native vegetation will be planted along the perimeter of the levee to enhance ecological functions.

4. The proposed use will cause no unreasonable adverse effects to the shoreline environment designation in which it is located.

   Applicant's Response: *Dikes and levees are a conditional use in the Urban Conservancy designation and allowed if the project is for environmental restoration and the City determines that there will be an increase in desired ecological functions. The proposed setback levee is part of an ecological restoration project and the levee is intended to protect adjacent property from the daily tidal inundation. The overall project will increase the estuarine ecological functions of the project area.*

F. Critical Areas

The entire restoration site has been classified by NOAA as a Category 3, freshwater, depressional wetland. The site also contains fish and wildlife habitat, geologic hazards, and frequently flooded areas. Both Jones and Allen Creeks are classified as Type F streams under Marysville Municipal Code (MMC) because they are used by salmonids. According to the Washington State Department of Natural Resources, the site has moderate to high susceptibility to liquefaction, which classifies the site as a geologic hazard areas according to MMC. The entire project is located in the 100-year floodplain and the majority of the site is located within the FEMA designated floodway for Ebey Slough.

The project is a restoration project which will improve wetland and fish and wildlife habitat conditions. The project is considered self-mitigating and permanent adverse impacts will not result from the activities outlined in this Phase. No mitigation for impacts to wetlands/streams is required as a result of this project.

The US Department of the Army, Seattle District, Corps of Engineers performed a zero-rise analysis for the proposed setback levee along Ebey Slough. The zero-rise analysis was completed on 3/29/11 The analysis identified a .1 ft rise in the unencroached flood level within the restoration site and potential .2 ft rise at points south of the site.

The City of Marysville met with staff from FEMA, US Army Corps of Engineers, Tulalip Tribes and Department of Ecology to discuss the results. FEMA has issued a policy on fish enhancement structures within the floodway. In the meeting FEMA staff described the policy as it relates to restoration projects, such as the Qwuloolt Restoration. The policy identifies that rather than "no-rise", the community official should certify that the project was designed to keep the rise within the floodplain as close to zero as practically possible and that no structures are impacted by the rise. DOE staff also contacted Snohomish County staff to share this data and they did not indicate concern.

G. Conformance with SEPA

After evaluation of the applicant's environmental checklist submitted with the application, a Mitigated Determination of Non-Significance (MDNS) was issued on June 29, 2011, there were no appeals. The threshold determination is adopted by reference into this report.

H. CONCLUSIONS

1. The proposal as conditioned is consistent with the City of Marysville Shoreline Management Master Program goals/policies/regulations.
2. A Mitigated Determination of Non-Significance was issued on June 29, 2011, there were no appeals.
3. The applicant is still in the process of obtaining construction/flood easements over certain properties within the project boundaries. Flooding will not be allowed to commence on those properties (including City-owned lands) until the properties are secured and/or proper easements have been obtained.
4. In 2006 the City was contacted by Foley Cleveland regarding a BLA that was recorded after the sale of 29050300200100 to the Tulalip Tribes. The then owners Peter Poortinga and Marty Loberg sold the property to the Tribes with the understanding that the existing property line had been revised to exclude the existing house through the BLA process. Mr. Foley indicated that they believed that the BLA was recorded after the sale of the property and therefore the BLA was invalid. The city concurred with that conclusion. As the existing home has been sold to a private individual there appears to be an issue with title.
5. This proposal as conditioned is consistent with the City's Critical Areas Ordinance.
6. This proposal as conditioned is consistent with the City's Floodplain Ordinance.

III. STAFF RECOMMENDATION

Based upon the above stated findings and conclusions, the Community Development Department recommends approval of the Shoreline Substantial Development Permit subject to the following conditions:

1. Prior to levee removal, the applicant must either secure ownership of all parcels within the project work area and/or obtain flood easements over the affected properties. If flood easements cannot be obtained, those properties must be removed from the project and adequate measures must be taken to prevent flooding of said properties. A *Memorandum of Agreement* between the City of Marysville and the Tulalip Tribes is required prior to flooding of city-owned lands. Also, the title issue related to BLA 98-004 recorded under AF# 9808035010 must be resolved prior to any activity occurring on parcel 29050300200100.
2. Prior to levee removal, the applicant shall grant recreational/trail easements over the following areas:
    a. The newly constructed levee along the west project boundary;
    b. Adjacent to Sunnyside Blvd on TP# 30053400102100 to connect the existing northern end of the Harborview Village trail to Sunnyside Blvd; and

c. Connection of southern end of Ebey Waterfront Trail to the planned City park located on TP#(s) 29050300108500 & 290503108400 – provided the NRCS easement can be amended to allow trail construction.

The easements shall be recorded with the Snohomish County Auditor's Office prior to levee removal.

3. The Restoration project will be required to incorporate all measures, including alternative design levee breach, as recommended in the modeling efforts by Batelle and PWA referenced in the issued technical memorandum, or as updated during final engineering design. These measures include, but are not limited to: (MDNS #1)

    a. Brashler Industrial Park drainage improvements including construction of a stormwater detention facility as described in the 12/02/08 PWA preliminary design analyses;
    b. Construction of levees to protect existing industrial and residential properties as described in the 12/02/08 PWA memo as the 'West Levee';
    c. Internal berms that shall be designed as wave breaks and designed to help promote channel stability;
    d. Removal and replacement of storm drain level spreaders that are below the +12' NAVD contour;
    e. Raising the existing trail (Harborview system) where the trail is below 12'

4. The applicant will provide annual monitoring reports to the City of Marysville for a 5-year monitoring period and then a final monitoring report at 10 years, evaluating the following improvements: (MDNS #2)

    a. West Levee and related industrial park drainage facilities;
    b. Water control structure evaluation for industrial park and monitoring reports for groundwater levels behind the levee system;
    c. Monitoring of south side of wastewater treatment plant (WWTP) levee to evaluate post-project conditions resulting from restoration project.

5. The applicant will implement measures to repair any degradation or failure of project improvements identified in the monitoring reports listed in condition 2 above. (MDNS #3)

6. The applicant shall submit a pre- and post- construction road evaluation report, as approved by the City Engineer, and repair any post-construction related road damage caused by heavy truck traffic generated as a result of project construction. (MDNS #4)

7. Prior to commencement of construction activities related to the Christofferson grading project, the applicant shall submit a traffic control plan to the City Traffic Engineer for review and approval. The plan shall include the following elements: 1) The haul vehicle should be limited to vehicles not larger/longer than 10 wheel, 10-12 yard dump trucks; and 2) the access on to and off of 61st St (Sunnyside Blvd) be controlled by two way flagging control capable of safely holding approaching traffic during the access maneuvers. (MDNS #5)

8. The applicant shall mow the existing vegetation within the inundation area, or apply other vegetation management strategies to reduce the amount of organic matter immediately prior to dike breaching. (MDNS #6)
9. Post dike construction, the applicant shall be required to monitor and evaluate salt water intrusion onto adjacent properties and as necessary, initiate appropriate mitigation measures to address the situation. (MDNS #7)
10. The applicant will repair or armor the WWTP levee if any damages result from channel velocities or scour, as documented in the monitoring report for condition 2c above. The applicant will also be required to repair or armor the southern, city-owned levee if any damages result as a result of channel velocities or scour. Maintenance vehicle access shall be maintained to the south levy post dike breach. (MDNS #8)

Prepared by: CDL

Reviewed by: gh